

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
International Broadcasting Corporation	)	File Number EB-07-SJ-068
	)	
San Juan, PR	)	NAL/Acct. No. 200832680001
	)	
Antenna Structure Registration # 1026702	)	FRN 0003736220
	)	

**FORFEITURE ORDER**

**Adopted:** January 7, 2008

**Released:** January 9, 2008

By the Regional Director, South Central Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of thirteen thousand dollars (\$13,000) to International Broadcasting Corporation (“IBC”), owner of antenna structure # 1026702, in Canovanas, Puerto Rico, for willful and repeated violation of Sections 17.50 and 17.57 of the Commission’s Rules (“*Rules*”).<sup>1</sup> The noted violations involve IBC’s failure to paint its antenna structure to maintain good visibility, and failure to notify the Commission of a change in antenna structure ownership.

**II. BACKGROUND**

2. On September 7 and 11, 2007 agents from the Commission’s San Juan Office of the Enforcement Bureau (“*San Juan Office*”) inspected IBC’s antenna structure and noted that the tower’s paint was extremely faded and washed away in most areas. Antenna structure # 1026702 is more than 200 feet in height and requires painting and lighting.<sup>2</sup> The agents consulted the Commission’s Antenna Structure Registration (“*ASR*”) database and noted that “*Del Pueblo Radio Corporation*” was listed as the owner of antenna structure # 1026702. After the owner stated that IBC acquired the tower in 2003, the agents informed him that he must update the structure’s ownership information in the ASR database. On both days, the agents also warned IBC’s owner that the structure needed to be repainted. IBC’s owner acknowledged that the structure needed painting and did not say when it had last been painted.

3. On October 25, 2007, agents from the San Juan Office again observed antenna structure # 1026702 and found that its paint was still extremely faded and washed away in most areas. On November 1, 2007, Del Pueblo Radio Corporation was still listed as the owner of the structure in the ASR database.

4. On November 13, 2007, the San Juan Office issued a *Notice of Apparent Liability for Forfeiture* to IBC in the amount of thirteen thousand dollars (\$13,000) for the apparent willful and

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<sup>1</sup> 47 C.F.R. §§ 17.50, 17.57.

<sup>2</sup> See 47 C.F.R. § 17.21.

repeated violation of Sections 17.50 and 17.57 of the Rules.<sup>3</sup> IBC submitted a response to the *NAL* requesting a reduction or cancellation of the proposed forfeiture.

### III. DISCUSSION

5. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (“Act”),<sup>4</sup> Section 1.80 of the Rules,<sup>5</sup> and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), recon. denied, 15 FCC Rcd 303 (1999) (“*Forfeiture Policy Statement*”). In examining IBC’s response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>6</sup>

6. Section 17.50 of the Rules requires that antenna structures requiring painting shall be cleaned or repainted as often as necessary to maintain good visibility. Antenna structure # 1026702 is more than 200 feet in height and is required to be painted. On September 7 and 11, and October 25, 2007, an inspection of IBC’s antenna structure revealed that the paint on the tower had washed away on most of the tower, leaving the metal exposed and reducing the tower’s visibility. The paint’s condition was so deteriorated that it had to have occurred over more than one day. IBC was warned on September 7 and 11, 2007 that its structure needed to be repainted. Thus, based on the evidence, we find that IBC willfully<sup>7</sup> and repeatedly<sup>8</sup> violated Section 17.50 of the Rules by failing to paint its antenna structure to maintain good visibility.

7. In its response to the *NAL*, IBC requests cancellation or reduction of the proposed forfeiture because weather prevented it from painting its antenna structure. It asserts that a contractor is now prepared to paint the structure as soon as weather permits. IBC’s response did not provide a date for when it first attempted to contact a painter about the structure, but the attached documentation states that it hired a painter on September 15, 2007, a date after the first two inspections. Moreover, *contemporaneous* with the first two inspections, IBC failed to mention that it had already taken steps to have the structure painted. Absent reliable evidence that IBC attempted to have its structure painted prior to the agents’ inspections, we find no grounds to cancel or reduce the forfeiture, as corrective action taken to come into compliance with the Rules is expected, and does not nullify or mitigate any prior forfeitures or violations.<sup>9</sup>

8. Section 17.57 of the Rules requires that the owner of an antenna structure for which an ASR number has been obtained must immediately notify the Commission using FCC Form 854 upon any

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<sup>3</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200832680001 (Enf. Bur., San Juan Office, November 13, 2007) (“*NAL*”).

<sup>4</sup> 47 U.S.C. § 503(b).

<sup>5</sup> 47 C.F.R. § 1.80.

<sup>6</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>7</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful,’ ... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act ....” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>8</sup> The term “repeated,” when used with reference to the commission or omission of any act, “means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” 47 U.S.C. § 312(f)(2).

<sup>9</sup> See *Seawest Yacht Brokers*, Forfeiture Order, 9 FCC Rcd 6099 (1994).

change in structure height or change in ownership information. On September 7 and 11, and November 1, 2007, Del Pueblo Radio Corporation was listed as the owner of antenna structure # 1026702 in the ASR database. IBC's owner admitted that it acquired the structure in 2003. IBC was warned on September 7 and 11, 2007 that it must update the structure ownership information. Thus, based on the evidence, we find that IBC willfully and repeatedly violated Section 17.57 of the Rules by failing to notify the Commission of a change in antenna structure ownership.

9. In its response to the *NAL*, IBC claims that it was unable to register its antenna structure because the previous structure owner did not have a valid FCC Registration Number ("FRN"). IBC states that it could not obtain an FRN on behalf of the previous owner, as that would be akin to "theft." Without a valid FRN for the previous owner, IBC asserts it was unable to update the ownership information. After discussing the situation with Commission staff, it was determined that an FRN for the now defunct previous owner could be created using an "Exempt Activities" category, thus allowing IBC to update the ownership information. Because of the difficulties involved with updating the ownership information, IBC requests cancellation or reduction of the proposed forfeiture. However, IBC's response did not provide a date for its first attempt to update the structure ownership information, and the attached documentation states that it first contacted someone about updating the tower ownership information on September 19, 2007, a date after the first two inspections and several years after it acquired the structure. Moreover, *contemporaneous* with the first two inspections, IBC failed to mention that it had previously attempted to update the structure ownership information. Absent reliable evidence that IBC attempted to update its ownership information prior to the agents' inspections, we find no grounds to cancel or reduce the forfeiture, as corrective action taken to come into compliance with the Rules is expected, and does not nullify or mitigate any prior forfeitures or violations.

10. We have examined IBC's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that IBC willfully and repeatedly violated Sections 17.50 and 17.57 of the Rules. We find no basis for cancellation or reduction of the \$13,000 forfeiture proposed for these violations.

#### IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules, International Broadcasting Corporation **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of thirteen thousand dollars (\$13,000) for violation of Sections 17.50 and 17.57 of the Rules.<sup>10</sup>

12. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>11</sup> Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for full payment under an installment plan should be sent to: Associate Managing Director, Financial Operations, 445 12th Street, S.W., Room 1A625, Washington, D.C. 20554.<sup>12</sup>

<sup>10</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 17.50, 17.57.

<sup>11</sup> 47 U.S.C. § 504(a).

<sup>12</sup> See 47 C.F.R. § 1.1914.

13. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to International Broadcasting Corporation at its address of record and to its counsel, Richard F. Swift, Irwin, Campbell & Tannenwald, 1730 Rhode Island Avenue NW, Suite 200, Washington DC, 20036-3101.

FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton  
Regional Director, South Central Region  
Enforcement Bureau